

OIL AND GAS CONSULTATION AND SHALE GAS DEVELOPMENT IN BRITISH COLUMBIA

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ON 16 APRIL 2014, Chief Sharleen Gale of the Fort Nelson First Nation (FNFN) stood in front of a roomful of First Nation Shale Gas/LNG Summit attendees in Fort Nelson, British Columbia, and informed government employees that they were no longer welcome on FNFN territory and should leave immediately (Prystupa 2014). The previous day, in an effort to speed up the already rapid pace of development of the unconventional gas industry, the provincial government had announced that sweet gas processing plants in the province would be fast tracked, meaning that they would be exempted from environmental assessments. The decision was made without consultation with First Nations. In solidarity with the FNFN, twenty-eight First Nations communities and political organizations signed a declaration against the unilateral decision (*ibid.*). Within hours, the government was forced to issue a public apology and revoke the exemption.

The government's quick reversal of its decision clearly indicates the importance it places on gaining the support of First Nations as it attempts to rapidly launch an extensive liquefied natural gas (LNG) industry that will require not only a dramatic expansion of the unconventional gas industry across Treaty 8 First Nations territory in northeast British Columbia but also the building of pipelines on unceded First Nations territory across the province. The response by First Nations provided a strong message that a lack of consultation on decisions affecting them would not be tolerated. The strength of the response also suggests, however, that this was far from the first instance of First Nations being excluded from decisions that will affect their territories. Driving the FNFN's response in particular was a deeper concern: despite

* This research was funded by Carbon Management Canada, Project D215, and a SSHRC master's fellowship. The authors would like to express their thanks to all participating Treaty 8 First Nations, Lana Lowe, Roberto Concepcion, Trevor Lantz, Ellie Stephenson, Joanna Reid, Graeme Wynn, and two anonymous reviewers for their thoughtful assistance with this article.

a formal consultation process for oil and gas development on their territory, the speed and scale of industry expansion and the resulting impacts are unacceptable to the nation. Even when consulted, FNFN members feel their concerns are not being adequately accommodated. The FNFN incident is thus reflective of a broader and significant challenge: the provincial government wants to rapidly advance an industry that will have significant ramifications for the province – and especially for affected First Nations – but lacks the institutions and relationships to facilitate transformation at this scale. The province’s duty to consult First Nations and to accommodate their concerns is the core of government–First Nations relationships.¹ The incident above and the research we present here suggest that the province has inadequately fulfilled its duty of consultation – let alone accommodation – in the case of the expansion of the LNG industry in British Columbia.

Our research focuses on the Oil and Gas Commission’s (OGC) oil and gas consultation agreements with Treaty 8 First Nations and on participants’ perceptions of the efficacy of their implementation. We identify overarching concerns with oil and gas consultation and governance, while grounding our research in a case study of the FNFN, whose traditional lands (and associated “consultation zone”) include the massive shale gas plays of the Horn River Basin, the Liard Basin, and the Cordova Embayment (see Figure 1). Since we conducted our research with Treaty 8 First Nations in the summer of 2012, First Nations frustration with these consultation process agreements has mounted, and many are calling for larger shifts in oil and gas–related decision making. Even as First Nations struggle for these broader governance changes, however, our research identifies procedural problems and areas for immediate, tangible improvement.

This type of tension is not unique to northeastern British Columbia: Indigenous communities across Canada and around the world are struggling to reconcile globally driven resource extraction with their needs and legally protected rights as they risk disproportionately bearing the impacts of development (Gedicks 2001; Nuttall 2010; O’Rourke and Connolly 2003). As resource extraction spreads, questions of sustainability and justice become more urgent. Shale gas in northeast British Columbia provides a focal point to examine whether and how governments can adequately engage Indigenous peoples’ concerns in relation to oil and gas development on Indigenous lands. Such

¹ In the wake of the Supreme Court of Canada’s recent *Tsilhqot’in* decision, this duty also extends to the need to gain the consent of at least those affected First Nations who have not signed treaties.

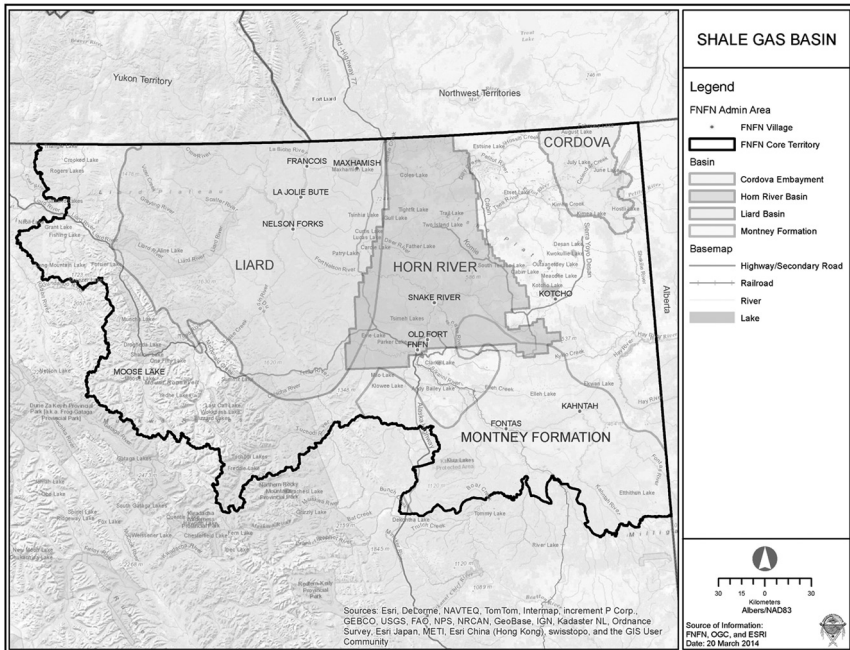


Figure 1. Shale gas plays within the FNFN's consultation zone, including the Liard River Basin, the Horn River Basin, and the Cordova Embayment. *Source:* Fort Nelson First Nation Lands Department.

analysis is essential not only for those assessing the social and political implications of oil and gas development in British Columbia but also for other Indigenous peoples negotiating consultation protocols or otherwise institutionalizing their relationship with the state. As well, this analysis is relevant to scholars seeking to understand how legal rights are “touching down” at specific sites and how practices of resource management are restructuring relations of power.

In the next section we provide the critical context needed to understand the oil and gas consultation process and industrial development in northeast British Columbia. In subsequent sections, we describe our methods, the results of our research on the consultation process, differing perceptions of the process's efficacy and implementation, and the FNFN's experience with consultation. Finally, we offer proposals for the much-needed reform of oil and gas governance in British Columbia.

CRITICAL CONTEXT: OIL AND GAS DEVELOPMENT AND CONSULTATION IN BRITISH COLUMBIA

As global demand for natural gas grows, the International Energy Agency (2012) anticipates that, in the coming decades, Canada will be one of the top exporters of unconventional natural gas.² More than 50 percent of the 388 trillion cubic feet (Tcf) of recoverable shale gas in Canada is located in northeast British Columbia (Energy Information Administration 2011), and the province is eager to take advantage of this resource. However, the discovery of major unconventional reserves throughout North America has resulted in depressed natural gas prices, which are unlikely to rise until new markets are opened up (BC MEM 2012; Boersma and Johnson 2012). In order to benefit from the price differential between North American and Asian markets, the province is aggressively pursuing the development of at least a half dozen LNG facilities on the west coast. Ambitious LNG export goals laid out in the province's LNG strategy will require overall annual production to increase from 1.1 Tcf to 3 Tcf by 2020 (BC MEM 2012). This increase will entail large-scale infrastructure development throughout northeast British Columbia, a region covered by the traditional territories of Treaty 8 First Nations.

Oil and gas governance in the province is occurring in the context of neoliberal reforms that are dismantling environmental regulation, streamlining natural resource regulatory processes, and reducing the provincial government's presence in the northeast (Markey, Halseth, and Manson 2008; McBride and McNutt 2007). The streamlining of the oil and gas industry began in 1998 with the introduction of the BC OGC. Considered a "one stop shop" for industry, the OGC is responsible for "reviewing and assessing applications for industry activity, consulting with First Nations, cooperating with partner agencies, and ensuring that industry complies with provincial legislation and all regulatory requirements" (BC OGC 2013, 2). The Oil and Gas Activities Act (2008) redefined the roles and responsibilities of the BC OGC, providing it with "stronger compliance and enforcement powers" and greater authority over a growing number of oil- and gas-related activities more generally (BC MEM 2010). At the same time, provincial ministries were downsized,

² Unconventional natural gas is found in rock formations that require non-traditional extraction techniques. The most common techniques are hydraulic fracturing and directional drilling. Hydraulic fracturing (or "fracking") injects large volumes of water mixed with sand and chemicals underground at high pressures to create fissures in the rock, releasing the gas to flow into the well. The three types of unconventional gas are shale gas, tight gas, and coal bed methane. Shale and tight gas formations are being developed in northeastern British Columbia.

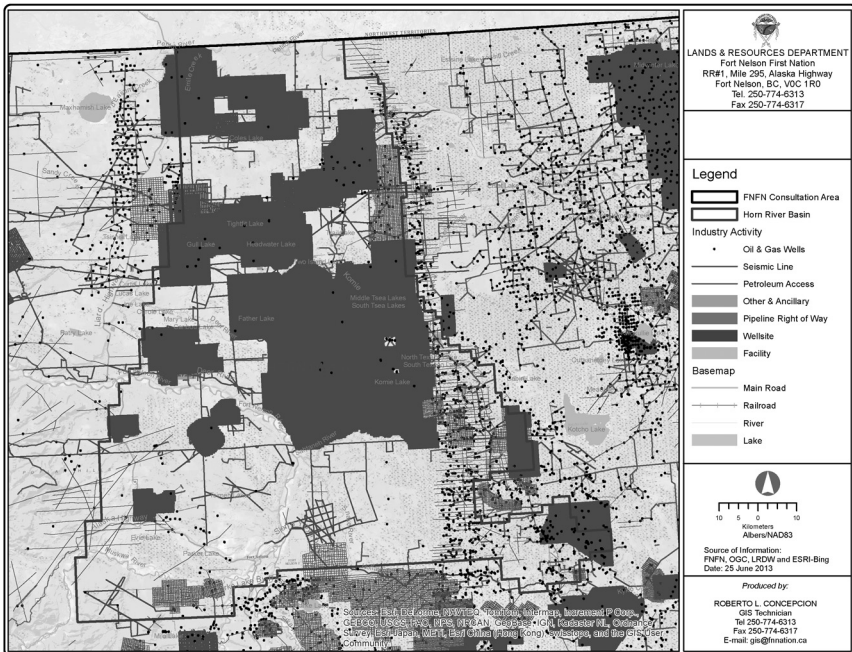


Figure 2. All oil- and gas-related developments within and surrounding the Horn River Basin as of July 2014. *Source:* Fort Nelson First Nation Lands Department.

resulting in greater reliance on the industry-funded ogc for expertise.³ These changes took place at the same time that the natural gas industry was shifting from conventional to unconventional gas, opening up previously undeveloped areas of the northeast.

Since 2008, when land sale revenues peaked at \$1.1 billion, shale gas exploration and development in the Horn River Basin has boomed. By 2011, there were 285 new wells in the Horn River Basin (Adams 2012). Figure 2 displays all oil- and gas-related development within the basin as of July 2014; large areas are blanketed in seismic lines that range from one to three metres in width. In parts of the northeast where infrastructure already existed, unconventional gas production grew even more rapidly; the Montney Trend had 1,367 wells drilled between 2005 and 2012 (OGC, personal communication, 28 June 2012).

Industrial resource extraction in northeast British Columbia is not a new phenomenon. The federal government began the process of treaty

³ The government's overreliance on the ogc is often criticized by those concerned about the adequacy of current regulation and enforcement (see Campbell and Hume 2012; Campbell and Horne 2011; Parfitt 2011; WCEL 2004).

making with First Nations in 1899, in large part to enable the extraction of newly surveyed minerals (Fumoleau 2004; Ray 1999). Despite the fact that resource extraction was Canada's primary focus, the Crown's commissioners assured Treaty 8 First Nations that "the treaty would not lead to any forced interference with their mode of life," stating that "they would be as free to hunt and fish after the treaty as they would be if they never entered into it" (Laird, Ross, and McKenna 1899). In 1982, Aboriginal and treaty rights were recognized and affirmed under section 35(i) of the Constitution Act, and subsequent case law has laid out criteria regarding the provincial government's duty to consult and accommodate on any activities that have the potential to infringe on Aboriginal and treaty rights.⁴ Despite being a legally mandated process, the adequacy of consultation and accommodation efforts in northern British Columbia continues to be highly contested. Researchers Booth and Skelton (2011a, 698) call the consultation process in the northeast an "institutionalized and inevitable failure" that is impeding the advancement of new relationships with First Nations.

Industrial resource activities in northeast British Columbia have altered how several Treaty 8 First Nations are able to practise their land-based rights (Booth and Skelton 2011a; Muir and Booth 2011). Projected developments are expected to worsen habitat fragmentation and degradation and substantively alter predator-prey relationships (Nitschke 2008). Accelerated unconventional gas development also presents novel environmental concerns, including excessive water consumption and contamination, and significantly higher greenhouse gas emissions in comparison to conventional gas developments (Campbell and Horne 2011; Howarth, Santoro, and Ingraffea 2011; Osborn et al. 2011; Parfitt 2011; Stephenson, Doukas, and Shaw 2012).⁵ These impacts carry serious repercussions for Treaty 8 First Nations, whose land-based cultures are inextricably linked to the health of the environment.

As unconventional development evolves, oil and gas regulatory reforms are being implemented reactively. On behalf of the BC ogc, Stefik and Paulson (2010) authored a paper acknowledging that regulatory reforms have not yet dealt with the new challenges posed by hydraulic fracturing, including unprecedented amounts of water use in the oil and gas industry.

⁴ British Columbia and Treaty 8 First Nations have differing positions regarding the interpretation of Treaty 8, section 35(i) of the Constitution Act, 1982, and subsequent case law on consultation and infringements to Aboriginal and treaty rights. See Morellato (2008) for an in-depth analysis of the Crown's duty to consult.

⁵ The lifecycle emissions of shale gas are hotly debated. See Stephenson, Doukas, and Shaw (2012) for an analysis of the best available research and the implications for the BC shale gas industry.

Despite this acknowledgment, the OGC continues to approve activity permits as the government works to understand and adapt to the new governance needs of an unconventional industry.

The OGC is responsible for fulfilling the government's duty to consult and accommodate on all oil- and gas-related activities that it regulates. The OGC-led consultations with Treaty 8 First Nations in northeast British Columbia are based on the implementation of consultation process agreements (CPAs), negotiated by the BC Ministry of Aboriginal Relations and Reconciliation (MARR). These agreements codify First Nations participation in the OGC's permitting process and provide the only opportunity for First Nations to comment on proposed oil and gas activities within their traditional territories as they seek to protect their treaty rights.⁶ By the time the OGC is consulting with First Nations on industry activity, development has effectively been approved with the sale of tenure (Dagg, Campbell, and Simieritsch 2011).⁷

Figure 3 provides a flowchart of the consultation process outlined in the FNFN's Oil and Gas Consultation Agreement signed in June 2012. Consultation begins when companies submit activity permit applications to the OGC. The OGC then forwards copies of the applications to the lands departments of all First Nations within whose consultation zones the proposed activity falls. If the First Nation identifies concerns, it will discuss mitigation options with the OGC (most often through e-mail exchanges or phone calls). The OGC's First Nations liaison officer (FNLO) then writes up these options and forwards them to a statutory decision maker.⁸ When the FNLO notifies the lands department that a consultation report will be submitted to the decision maker, the First Nation may request that the application go to issue resolution if concerns remain outstanding.

The issue resolution process extends time frames and initiates a meeting between the First Nation's lands director and the OGC area director.

⁶ Provincial and federal environmental assessments (EAs) also include consultation processes; however, the dispersed nature of natural gas development and the streamlining of regulation have resulted in few EAs being triggered for general development. Treaty 8 First Nations do participate in EAs for gas plants and transboundary pipelines, but smaller developments, such as individual well pads, section 8 water withdrawals, and access roads fall below the EA threshold.

⁷ The introduction of consultation on individual tenure parcels by the BC Ministry of Energy and Mines (MEM) in new CPAs has failed to significantly alter consultation or outcomes. The reasons that the introduction of tenure consultation into the CPAs is not effectual are explained below.

⁸ The First Nations liaison officer is an OGC employee responsible for conducting consultation and conveying information between the Nation and the OGC. A statutory decision maker is responsible for ensuring that permitting decisions are based on all relevant laws and policies, including the Crown's legal obligations to consult and accommodate. A number of positions within the OGC hold statutory decision-making authority under the Oil and Gas Activities Act.

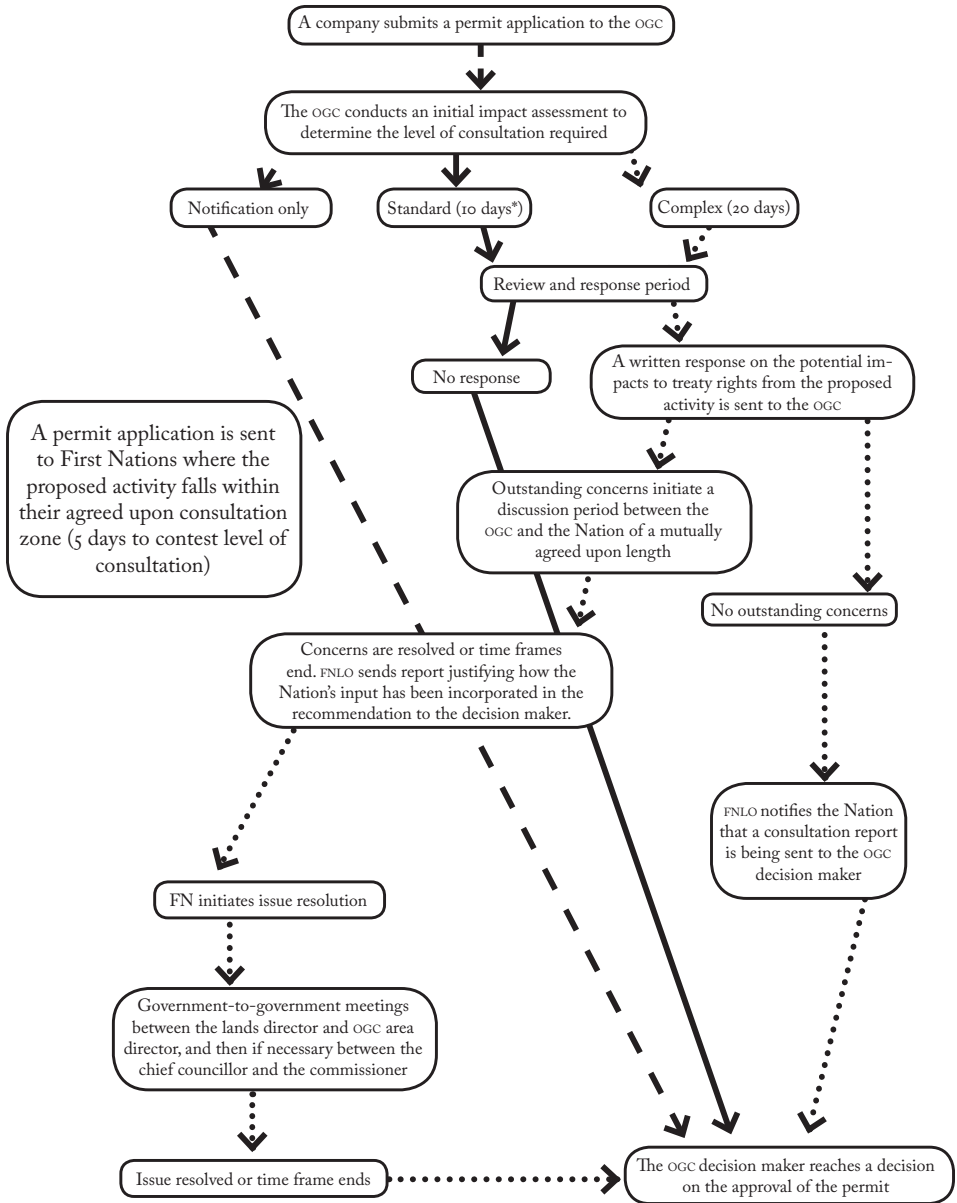


Figure 3. A diagram of the FNFN's oil and gas consultation process, as outlined in the FNFN's Oil and Gas Consultation Agreement. *Source:* BC Ministry of Aboriginal Relations and Reconciliation (MARR) (2012).

If the issue is not resolved, the process culminates with a meeting between the chief councillor of the First Nation and the ogc commissioner. In the event that there are still outstanding concerns at the end of the issue resolution process, the FNLO will submit a written summary to the decision maker and the First Nation outlining how the nation's concerns have been addressed. First Nations cannot communicate directly with the decision maker, and decision-making authority remains with the statutory decision maker at all times. Consequently, judicial review is the only option once an application is approved.

This process, with minor variations, is followed by all participating First Nations lands departments. The new consultation agreements (including the FNFN agreement and those signed subsequent to interviews conducted for this research) remain very similar to the previous CPAs that were valid from 2006 to 2011.⁹ In our research, interviewees shared their perceptions of the process and their experiences in relation to its implementation.

METHODS

Our research employed in-depth semi-structured interviews, participant observation, and document analysis. Interviewees were selected based on their proximity to and knowledge of the consultation process and its implementation. In total, fifteen semi-structured interviews were conducted with seventeen interviewees in June and July 2012. Interviewees included five lands managers from four Treaty 8 First Nations and the Treaty 8 Tribal Association; FNFN lands staff, elders, and community members; past and present provincial government employees; and industry representatives. The BC ogc responded to the interview questions in writing. Interviews were conducted while most Treaty 8 First Nations were still in the process of negotiating new consultation agreements.¹⁰ During this time, the primary author spent six weeks working in the FNFN Lands Department, participating in and observing

⁹ The provincial government provides funding to lands departments to participate in the government-mandated consultation process. In the CPAs that were effective from 2006 to 2011, First Nations received seven hundred dollars for each wellhead permit referral, in addition to base departmental funding. Funding was not provided to assess any other ogc-issued referral, including permit applications for roads, borrow pits, and short-term water withdrawals. Limited interim funding was offered to lands departments during the negotiations for new agreements. The names of the agreements vary between First Nations and the parameters range from ogc-specific to all-ministry consultation, depending on the interests of the nation. For publicly available agreements, see: <http://www.bcogc.ca/first-nations/consultation-process-agreements>.

¹⁰ The FNFN signed its new Oil and Gas Consultation Agreement in June 2012 (MARR 2012).

day-to-day activities related to consultation and shale gas development within FNFN territory.

The interview audio recordings were transcribed, themed, and analyzed using the computer software NVIVO 8.0. Participant observation and document analysis was used to contextualize and supplement interview data. Since the issues that participating Treaty 8 First Nations lands departments face in relation to unconventional gas development are complex and highly variable, we have left perceptions in interviewees' own words as often as possible to ensure that intent and context remain intact.

RESULTS: PERCEPTIONS OF THE CONSULTATION PROCESS

During our research, we identified two overarching problems with the consultation process: the permit-by-permit approach and the exclusion of First Nations from the decision-making process.

Problem 1: The Permit-by-Permit Approach

The permit-by-permit consultation process mirrors the regulatory process and therefore shares many of the same shortcomings, including a lack of long-term or landscape-scale planning or monitoring practices. Receipt of a permit application from the OGC is often the first notification a First Nation receives about a proposed activity. By this time, the tenure has already been sold to an industry proponent, which means that millions of dollars have been invested in anticipation of development proceeding unobstructed. The application referral contains a notification regarding the details of the proposed activity, an archaeology impact assessment (AIA) determining the likelihood of archaeology sites being located at the location of the proposed activity, any wildlife studies or other studies that have been previously conducted, and – depending on the lands department's GIS capacity – paper maps or access to the GIS data.¹¹ The decision maker reviews each permit application as an individual project so all concerns raised during consultation must be site specific and are restricted to the point of activity. Treaty 8 lands managers identified numerous intersecting issues with the permit-by-permit approach. The most frequently cited challenges are discussed below. Underlying all of the cited challenges was the issue of inadequate capacity. A lack of capacity (both in terms of expertise and resources)

¹¹ See page 9 of the FNFN Oil and Gas Consultation Agreement (MARR 2012) for a complete list of what is included in an application. Supplementary documents provided with the application are similar across First Nations.

exacerbates the challenges identified with the process: time restrictions, information and data deficits, and site specificity. As such, issues with capacity are interwoven throughout.

Time Restrictions

First Nations lands departments receive referrals for all oil and gas applications that fall within their designated consultation zones. Upon receipt of a permit application, the First Nation has between five and twenty days to submit a response, depending on whether it is classified as “notification only,” “standard,” or “complex.” All lands managers voiced frustration with these restrictive response time frames. Within the five- to twenty-day response periods, lands departments are attempting to conduct site visits, notify potentially affected community members, and compile traditional use information and ecological data to make an informed assessment of the potential impact of the activity. The lands department then sends a response letter back to the OGC outlining any concerns and mitigation or accommodation proposals.

The restrictive time frames are made particularly challenging by the volume of referrals being received and the limited capacity in the lands departments. In total, First Nations in northeast British Columbia received 3,882 oil and gas referrals between May 2011 and April 2012 (OGC, personal communication, 11 June 2012). In order to handle the volume of permits, some lands departments choose to prioritize certain culturally significant areas of their territory or focus on particular types of permits (e.g., short-term water permits). However, they may also work to simply respond to as many permits as possible since the OGC interprets no response as consent; if the First Nation does not respond within the allotted time frame, the OGC assumes that there are no potential impacts to treaty rights and proceeds to a decision.¹² As one lands manager explained:

If we don't respond within that time frame, they decide there are no impacts to our rights. So to them lack of information means lack of impact. Rather than, we don't know the information so maybe there is. We don't know the impacts so maybe we shouldn't say yes at this point. They assume there won't be impacts, which is backwards, I think. Convenient.

¹² Northeastern BC First Nations responded to 50.3 percent of all applications received between May 2011 and April 2012, indicating an extremely high rate of response, particularly considering 49.8 percent of applications were labelled “notification only” (OGC, personal communication, 11 June 2012).

At times lands departments are forced to “just respond trying to gain additional information in order to extend the time period to be able to have the time to properly oversee, or look over the application,” explained a consultant working for one of the Treaty 8 First Nations. Contacting community members regarding potential impacts of a proposed activity can take weeks if they are working in a camp or are out on the land hunting and trapping.

Despite time and capacity constraints, Doig River First Nation has developed a robust review process for each application:

When we get a referral in, our land officer does an initial review of it. We do a GIS review of it. Then we have an elder or monitor go out on every single application, out to the site. They have an eight-page assessment that they need to do. They bring it back and we bring those three components together and do an analysis, what the level of impact is, and then we send in a response accordingly.

Dedicating this level of attention for each application requires a highly standardized process that took the Doig River Lands Department more than six years to develop during a conventional gas boom.¹³ Several other Treaty 8 First Nations have a single staff person who handles all oil and gas applications. Often there is no staff person able to conduct site visits or to provide GIS expertise. Response letters are often prepared without seeing the proposed site and sometimes without a map of other developments in the area. This lack of capacity dramatically limits a First Nation’s ability to identify impacts to their rights.

The challenge of operating within restrictive time frames is exacerbated by the separate arrival of permits that are related to one another. In other words, the numerous permits required for a single project may arrive across a number of weeks. Since each permit is specific to a single activity, development for a single well can include upwards of twenty applications for access roads, sump pits, water withdrawals, and so on. One lands department employee explained the challenge this presents:

So it makes it hard because you have to go back, and I’ve had to do that a few times where I go, “Okay, well, it’s one well site, four hundred-by-four hundred metres, I can accept that.” It’s in an area that there’s no arc [archaeological sites], nothing like that, no TUS [traditional use study], okay. And then I get a file next that’s the twenty-five-kilometre

¹³ A case study of Doig River First Nation by Gosine and Teelucksingh (2008, 83) highlights the importance of GIS capacity in the consultation process, stating: “Maps, in a way, have become the de facto language to negotiate local indigenous interests.”

road to the one well site, and then you go, “Okay, well, now hold up, now it’s become a concern,” where as if you would have just outright, straight been like, “we’re building a twenty-five-kilometre road for one well,” then we could have tackled it way differently and requested information at that time too.

Simply piecing together permits to determine the true scale of a project can consume the response time frame before lands departments are able to assess potential rights infringements. Despite ongoing frustration with the restrictive time frames, negotiations with the province to extend them in the new consultation agreements have been unsuccessful. The province’s inflexibility on this point has increased lands managers’ frustration and their scepticism regarding the government’s intention to meaningfully address their concerns.

Information Deficits

The second most frequently cited challenge with the permit-by-permit process was the lack of available data to make an informed decision during consultation. Staff from four lands departments stressed that pertinent information is often missing when they need to respond to permit applications. One lands manager did not want more information solely because it would be overwhelming, considering the limited amount of time available to review each application. However, other lands managers and staff said they wanted more and better information, including better paper maps that incorporated surrounding permits and activities for those who did not have GIS capacity, completed archaeology reports before permit approval (not just the preliminary AIAs that are currently required), reports on water quality and quantity monitoring, and wildlife studies and timber utilization plans where applicable. Lands managers are able to request more information during the review and response period, but most of the time the data simply do not exist; the necessary research has not been conducted.

This challenge of gaining access to relevant information is exacerbated by the siloed ministry approach to oil and gas development that results in multiple ministries contacting First Nations about different aspects of the same project. Lands managers discussed how ministry representatives often passed off responsibility, resulting in a constant runaround for the information seekers that took up time and capacity during a highly time-sensitive process.

This information deficit speaks to the more fundamental issue of what information government considers relevant to the permit-by-permit

consultation and decision-making processes. Industry is not required to conduct cumulative impact assessments or landscape-scale studies because these go beyond the scope of the single-permit regulatory process. As a result, First Nations requests for information generated by landscape-scale studies and assessments are typically denied and the information deficit is perpetuated. Lands managers and staff said that, without adequate data, community concerns were frequently rejected by the OGC and industry as too anecdotal.

Site Specificity

The third challenge, site specificity, was identified by four lands departments as a source of continual frustration when staff members were trying to adequately protect their rights. Under the current regulatory system, an individual permit must have the potential to infringe on a treaty right at the point of activity, otherwise the concern is beyond the scope of the single application and, therefore, outside of the decision maker's mandate. As one lands manager explained: "It's frustrating because they have their mandate and their message and I hear it over and over and over again. And bottom line is, 'We know you have concerns ... and we know you have treaty rights in the area but we believe this shale gas development is not going to have any impact on your rights.'" However, while a single permit may not directly infringe on treaty rights, the cumulative impacts of so much activity – for example, the 309 shale gas wells approved in the Horn River Basin between 2005 and 2010 (BC OGC 2010) – clearly have the potential to transform the landscape in a manner that threatens the ability to practise legally recognized land-based rights (Garvie et al. 2014 (this issue); Booth and Skelton 2011a).

The narrow focus on site-specific, technical solutions to address cultural concerns leads to rights being addressed at an inappropriate scale. As one lands manager explained: "Culturally significant areas such as spiritual sites, gravesites, mineral licks, trails, et cetera. Those areas haven't been addressed. Now the OGC may think they have been because if there's a mineral lick they'll buffer, they'll say they can go around that, say with a fifty metre buffer, but it's not adequate from the community's perspective." In other words, what is at issue is not a single permit but, rather, the scale of development across the landscape and the recognition of land uses that require culturally appropriate mitigations. One First Nation's chief and council described the discrepancy between what the province considers to be adequate environmental and cultural protection (i.e., at a site-by-site scale) and what the First

Nation considers to be adequate protection (i.e., at a landscape scale) as an issue of fundamentally different world views. The consequence of this difference in ideology and choice of scale is that, before lands departments can begin identifying potential infringements according to individual permits, they must change the government's perceptions of what it is they are working to protect. One lands manager explained:

Part of it is defending even the definition of our treaty rights because BC has a very narrow definition of what our treaty rights are. And we hold to the ideas that were expressed by the elders when they negotiated the treaty and that were outlined in some of the treaty commissioners' reports and that talks about mode of life and a desire to not be interfered with. But the BC government views our treaty rights simply as the right to hunt, fish, and trap in our territory. So part of the defence of our treaty rights is to actually have the treaty interpreted in a way that's just, and that was in the spirit in which it was intended when the treaty was signed.

These differences in perceptions of the meaning of treaty rights influence how consultation is approached by both parties, making it even more difficult to work within the restrictive parameters of the process.

Implications of a Permit-by-Permit Process

All of the challenges identified by lands managers and staff are inter-related and are rooted in the fact that consultation occurs permit by permit. The overarching implication is that the focus of consultation is not where it needs to be in order to meaningfully protect treaty rights. The continual engagement of Treaty 8 First Nations at the site-specific permit level inhibits landscape-level discussions (which would reflect the scale of treaty rights) from taking place. Without a clear understanding of the development that has already occurred and what the short-term and long-term plans are, lands managers are often unable to make informed judgments on which permits are of real concern. Without adequate data, it is impossible for First Nations to create culturally and environmentally appropriate thresholds for development within their territories. One lands manager expressed the perception that "government doesn't seem too interested in seeing the big picture. They're happy to deal with the permit-by-permit thing. That way they don't really have to do any planning, or regulating or management, 'cause it's just one permit [laughs]." This is not how lands departments and their communities relate to and understand the land.

The continual struggle to keep pace with the OGC-led permit-by-permit process leaves lands departments with little time to work towards governance changes that would meaningfully engage their nations' concerns. Despite lands managers' commitment to returning robust responses, all of them perceive permit approvals to be inevitable. One lands manager stated: "Currently everything is just getting approved. Everything. Everything that comes through the door, 'cause basically as soon as it hits referral stage, you know that it's something that can't be undone." Throughout the primary author's field research, participants and interviewees continually referred to the consultation process as a "rubber stamp" or a "check box" for a permit on its way to approval. One lands department employee said: "They just need to talk to us to show that, yeah, we talked to those Indians over there, and, well, they had some concerns like normal. They need to build it anyways so let's do it." These perceptions speak to the inability of the permit-by-permit process to engage community concerns and also highlight the second problem with oil and gas consultation: the exclusion of First Nations from the decision-making process.

Problem 2: Exclusion from the Decision-Making Process

The second problem continually discussed by lands managers, staff, and consultants was the lack of influence that consultation has on permit outcomes, or, put differently, the failure of the consultation process to accommodate First Nations interests and concerns. This problem suggests that issues with the process reach far beyond the specific existing procedures. The overarching struggle is to shift the timing and to increase the influence of consultation within the overall oil and gas governance structure. In order to be effective, the consultation process must inform the decision to approve or even to deny a permit. As previously discussed, once oil and gas consultation is complete, the statutory decision maker determines whether or not to issue a permit based on all available data and regulatory requirements. Requests by the authors for an explanation from the OGC on how the information collected during consultation is incorporated at the point of decision making elicited the following response: "Each application is evaluated based on the commission's legal obligations, which are set out in the consultation agreements" (OGC, personal communication, 4 October 2012). However, the consultation agreements do not describe the process or tools used by the decision maker once the OGC's FNLO has submitted a consultation report. One government employee described the decision

maker's role strictly in terms of meeting legal requirements: "They're going to have to look at the consultation report, they're going to have to decide if the interests have been, you know, are legitimate and have been addressed properly, and if it can stand the test of a judicial review."

A narrow focus on the legality of consultation obfuscates the real purpose of the duty to consult: to ensure that Treaty 8 First Nations concerns and choices are meaningfully accommodated based on the Crown's fiduciary duties. In the absence of a transparent, publicly available decision-making framework that explains *how* the statutory decision maker reaches decisions, lands managers are unable to determine whether or not their concerns have been considered. As one lands manager stated, "They're supposed to be giving a higher weight to First Nations concerns, but unfortunately up here the economic development piece, or the economics, seem to weigh higher for some reason." Throughout the fieldwork for this research, numerous interviewees and community members referred to a permit that was fought by Halfway River First Nation as the *only* example of a permit application that has been denied or rejected due to a First Nation's objections. Subsequent to the denial of the application, Hunt Oil successfully sued the government of British Columbia for failing to consult with the First Nation prior to the sale of tenure and for not informing the company of the First Nation's adverse interests (Dagg, Campbell, and Simieritsch 2011). The fact that this is the only known example of a nation successfully contesting a permit application highlights the procedural disconnect between the consultation process and decision making. Equally concerning is Hunt Oil's successful lawsuit, which resulted in the province compensating the company for lost revenue. This sequence of events draws attention to the government's failure to correctly implement its own mandated processes in a way that fulfills its legal obligations.

The lack of transparency during the decision-making process, in combination with First Nations lack of success influencing permit outcomes, has left all interviewed lands managers questioning the legitimacy of the consultation process. One lands manager voiced this frustration: "Our decisions weren't being figured into any of the development decisions. I know that. We would say something and they would just come back with an excuse why we're wrong, or why they went ahead with the permit anyways. So a lot of their work has been justifying decisions that they made regarding our rights that we disagreed with."

Increasing capacity is essential to ensure that Treaty 8 communities are able to raise and document their concerns within the existing process.

But, given the structural concerns identified above, it is evident that an increase in capacity alone will not solve the challenges of a permit-by-permit approach and a consultation process that offers no guarantee of meaningfully affecting decision making. Indeed, frustration with the consultation process is in some ways intensified in lands departments that have higher capacity because it becomes evident that the process itself is preventing concerns from being adequately addressed. The FNFN is one example of a Treaty 8 community that has dramatically increased its capacity over the past five years and, in turn, its ability to participate in the OGC's consultation process.

CASE STUDY: THE FORT NELSON FIRST NATION'S CONSULTATION EXPERIENCE

The FNFN is the only BC Treaty 8 First Nation with traditional territory overlaying the Horn River Basin (HRB). Between 2005 and 2008, tenures throughout the HRB were purchased without consultation. The FNFN was unaware that unconventional gas development was going to occur on its lands until industry representatives started showing up in its offices. As the lands director explained: “[It was] like a bit of a gold rush on our land. Ninety-five percent of our core territory was under tenure within three years. They came in 2008 and started talking about what they were going to do. You know, giving us coffee mugs and baseball hats, shaking our hands, telling us what good guys they were.”

Industry's rush to begin extraction resulted in a period during which the Lands Department was unable to respond to permits in a manner with which it was satisfied. When industry began submitting a high volume of permit applications in 2008-09, the FNFN Lands Department had only four employees, all focused on reviewing individual permits. Over the last five years the scope of the Lands Department has been transformed. As described by an FNFN council member:

It's gone from that reactive approach to proactive, bigger picture, long-term vision. Instead of just looking at this one hundred-by-hundred well site, now you're looking at how does that hundred-by-hundred well site fit in within the whole territory, within the five-, ten-, fifteen-year period. So it's just a piece of the bigger puzzle now, so that's what the Lands Department is doing now, they're looking at the bigger comprehensive potential impacts to the land.

This high-level territorial perspective, coupled with increased capacity, has changed the way the Lands Department is able to participate in the consultation process. As one lands employee explained: “We actually now have time to be involved in the process, and start the consultation early, do things like join in for environmental assessments, get [the environmental technician] out in the field, community consultation, so it has changed quite a bit since 1998.”

Today, the Lands Department has GIS expertise, an environmental field technician, a major projects coordinator, a growing field monitoring program, multiple community outreach initiatives, and a large number of consultants working on a variety of projects. However, despite the FNFN’s new level of participation in the consultation process, permit outcomes continue to be at odds with the concerns voiced by the FNFN. While permits have been delayed or retracted by industry, the OGC has never formally denied an application in FNFN territory. Lands Department employees are frustrated by the effort exerted relative to the number of positive outcomes: “Sometimes it feels a little bit like your job doesn’t actually do anything. Like you are spending all this time stressing out like crazy, running around, working late, just bugging the community for constant comments and things like that, and pulling this information together and in the end nothing really gets included in the decision.”

The Effects of Ineffective Consultation on the FNFN

Frustration and dismay with the consultation process have a severe impact on relationships between the FNFN Lands Department and community members as well as on perceptions of future social and ecological resilience. As development progresses, community members are witnessing profound changes on the land – changes that, to a great extent, the Lands Department has been unable to mitigate. One staff member described issues that are dealt with by the Lands Department on a daily basis:

It’s hard because some people’s whole traplines have been written off technically, like there’s no way they could go out and make a viable living off of hunting and trapping because there are no animals, there’s no land, and you know, some of those traplines up there, they don’t even want to go out there because it’s dangerous and it smells and it’s ugly and what’s the point because all the moose and animals are disease-ridden and full of cancer and tumours. They don’t want to go on the lakes and stuff because the lakes are polluted, you can’t eat the

fish, you know there's a really big issue with the groundwater. They're scared to drink muskeg water and that's, you know, a healthy functioning muskeg will have the best water around. People are too afraid to drink it now.

The impacts on individual community members are overwhelming; as land-based livelihoods and cultural practices are stripped away, tensions and emotions are running high throughout the community. There is a growing sense of inevitability and dread of what the future holds. "I'm concerned about the young people," one elder stated. "What's going to happen is, you know, see a way of life destroyed." For some community members this sense of inevitability translates into a growing acceptance of the industry and its impacts. One interviewee explained that many FNFN community members "think the development is going to go ahead anyways, nothing they can do about it, might as well get a job. They just feel powerless to make change." Increasing reliance on industry employment and the resulting loss of land-based livelihoods, skills, and knowledge is further dividing the community.

Community frustration is also articulated in conflicts with the Lands Department and its perceived failure to protect the landscape. Independent of whether Treaty 8 First Nations governments hold legislated authority or decision-making power, lands departments are mandated by their communities to protect treaty rights for past, present, and future generations. As one employee explained:

There's a lot of anger towards the Lands Department, there's a lot of anger towards chief and council that, you know, FNFN isn't doing what they're supposed to be doing and they're not stopping the development. And we're stuck a little bit too because ... we can't stop the development, we can only express what we want mitigated, what we want to change from the development, but in the end it's the government who gives the permit and allows the land to be developed and the infrastructure go into place.

In the absence of a robust regulatory process, the responsibility to protect the ecological integrity of the region is falling to the Lands Department. However, the scale of responsibility that the FNFN's Lands Department is working to take on is disproportionate to the weight attached to consultation in the current oil and gas governance framework and the authority allocated to First Nations in development decision making. As a Lands Department employee explained: "As long as [consultation is] focused solely on permitting and deter-

mining at a micro-level that our rights aren't impacted then there's no way our interests will ever be addressed. It's not the way they do things. They're all looking for excuses to not address our rights."

Based on the understanding that the FNFN Lands Department is unable to meet community expectations for ecologically and culturally sound shale gas development through the existing consultation and decision-making processes, the nation is considering new tactics.¹⁴ The FNFN is redirecting capacity towards industry engagement, internal community planning and mobilization, and public outreach. Other participating Treaty 8 First Nations are likewise working towards transformative changes to the consultation process and overall governance configurations in their territories. The following section discusses lands managers' proposals for the consultation process.

PROPOSALS FOR CONSULTATION REFORM AND GOVERNANCE TRANSFORMATION

A number of recurring proposals emerged during interviews with lands managers and lands department staff. The proposals fall into three broad, interrelated categories: (1) early engagement, (2) regional landscape planning, and (3) cumulative impact assessment and monitoring. Some of the changes discussed within these three categories can be made immediately, within the existing current oil and gas governance structure, while First Nations are also negotiating for more fundamental governance changes that will build long-term sustainability.

Four lands managers stressed the need for early engagement. Early engagement would ensure that industry and government approach First Nations before tenure is sold so that potential land-use conflicts and treaty right infringements could be identified before the proponent has made a significant expenditure. One lands department employee explained the need for government involvement in this process:

I think there needs to be more early engagement, and I don't think it should just be with industry, although like I said you usually get more success with industry because you can really just sit across the table from them and say, "Look, this is a problem, how are we going to figure this out?" They have the authority to change it if it works within

¹⁴ In the wake of the April protest by the FNFN, these tactics have begun to bear fruit: government-to-government negotiations on a long-term agreement about resource management on FNFN territory have been expedited, and some interim changes to the consultation process have been implemented. These changes do not, however, apply to consultation processes with other Treaty 8 First Nations.

their plan but nobody's sitting behind them and making them change it. So I think early engagement with government being more heavily involved instead of them always sloughing off that duty would really help make this a more positive process for everybody.

Early engagement would reduce the pressure during the permit response time frames because the Lands Department would have a better understanding of the proponent's plans, and conflicts could be dealt with before the permitting stage. Additionally, by discussing plans at the conceptual stages, there is likely to be greater flexibility and opportunity for innovative solutions. This has the potential to benefit everyone, as one industry representative working with the FNFN explained:

It works good for us too because we don't want to submit something without talking to them or including them in the planning and then find out that there's a culturally significant area there or an environmentally sensitive area and we can't have the project there. So if we do all that planning with the idea that we're going to do something in this particular site and then all of a sudden we find out we can't, we've wasted a lot of time and resources planning for that, so it just makes sense, the earlier that we engage and work with the Fort Nelson First Nation the better it is for everyone.

A second proposal is for regional landscape planning that includes long-term development plans across all industries. Regional landscape planning would address a number of the challenges previously identified, including the staggered arrival of permits for a single project and inadequate maps for lands departments without GIS capacity, by providing communities – before referrals arrive – with a long-term vision of the impacts in their territories. Landscape-scale planning that effectively incorporated traditional knowledge would facilitate the collection and incorporation of traditional-use site information so that permits wouldn't be submitted for culturally significant areas, thus addressing the current problem, which is that permits are approved before archaeology reports are submitted. While industry proponents argue that development plans are fluid due to changing markets, lands managers perceive long-term landscape planning as essential to their community's well-being.

Finally, the change most frequently cited by lands managers, staff, consultants, and community members as a necessary governance improvement was the implementation of cross-sector cumulative effects assessment and monitoring. Cumulative effects assessments are not mandated for permitted activities; therefore, to date, they have been hap-

hazard and specific to individual major projects. While the government is in the process of implementing a cumulative effects pilot project in the northeast, lands managers have not been meaningfully included in its development. If created collaboratively, cumulative impact assessment and monitoring, in tandem with landscape planning, would enable the establishment of thresholds that could cap development at ecologically and culturally sound levels. As one lands manager explained, this process requires being out on the land: “So it’s a matter of going beyond paper, it’s a matter of going out on the land and really observing what will be lost because the main issue we see is water and then cumulative impacts. So if you get a visual of what you’re impacting out there I think it’s better for the [First] Nation.”

Most important, cumulative impact assessment and monitoring would mean the government would need to “work with Treaty 8 First Nations to develop a cumulative effects model, say, that addresses First Nation indicators, values and thresholds,” explained one lands manager. “I think that would be a start.” The importance of cumulative impact assessments in determining impacts to Aboriginal and treaty rights has been well documented in research on environmental assessment processes (Booth and Skelton 2011b, 2011c; Carrier Sekani Tribal Council 2007; IHRC 2010; Tollefson and Wipond 1998). A collaborative cumulative effects assessment and monitoring program would allow for the collection of data needed to fill existing information deficits, thus providing lands departments with the information they need to make informed decisions during landscape planning as well as in the permit-level processes. The BC Forest Practices Board (2011) identified inadequate decision-making frameworks as the principal reason that cumulative impact assessment and monitoring has not been successfully introduced into management plans across British Columbia. Programs that are developed collaboratively from inception with each community to include appropriate decision-making frameworks would help to overcome this barrier, which has plagued effective management planning. In addition, the inclusion of industry would help to alleviate the cost of additional data collection, which has been identified by the provincial government as an obstacle to protecting British Columbia’s biodiversity (Office of the Auditor General of BC 2013).

Overall, action on these proposals would restructure oil and gas governance so that a First Nation’s review of permits shifts from being the first and only opportunity to understand and influence shale gas

development to the last of multiple stages of participation.¹⁵ In the long run, this would streamline the permit process and free up departmental capacity to work at a more strategic level. All of these proposals are representative of the legally recognized rights of First Nations to have a say in where, how, and when development takes place within their territories. Despite the increasing resistance to current shale gas development, all lands managers cited the shale gas industry as potentially beneficial to their communities. The task, then, is one of realizing potential benefits through the development of governance frameworks that are capable of respecting and protecting Aboriginal and treaty rights.

SHIFTING FOCUS: AGREEMENT MAKING TO RELATIONSHIP BUILDING

The lands managers interviewed articulated a shared understanding of the limitations of the current consultation system, in particular its failure to operate at a scale that is representative of their treaty rights and at a point in the planning process that opens decision making to First Nations. Underlying these problems is the fact that Treaty 8 First Nations are trying to use the consultation process for purposes beyond the system's intended purpose because they perceive that the current regulatory framework provides an inadequate governance system for oil and gas development in the province, not least in that it lacks capacity to ensure regional ecological integrity. To date, proposed reforms fundamental to the effectiveness of the consultation process have not been adopted. Lands managers perceive this lack of change to mean that the provincial government is unwilling to provide Treaty 8 First Nations with greater authority. As one lands manager stated:

The First Nation needs to take responsibility, be able to take responsibility for some of the stuff that's happening here, which means getting out on the land and monitoring, doing the studies, but we also need the authority and government's not willing to give that up. I don't know what they're so afraid of, god [laughs] ... they don't seem interested in doing it. So why don't they let us do it?

However, there is the realization within government that better relationships are necessary. One provincial employee explained:

¹⁵ In contrast to current oil and gas regulation, forestry legislation requires a government-approved forest stewardship plan before permit applications for cutting or road building can be submitted (Forest and Range Practices Act 2002). This gives First Nations a better idea of the landscape-scale impacts up to five years in advance.

We need to develop a relationship, an engagement whereby the First Nation feels that they're an equal partner or else they're going to be pulling out of these things all the time, right? We're just going to be renegotiating. It's a lot of wasted energy ... but you know it is dependent on the people on the ground to implement, which is what it boils down to in the end, and our past experience hasn't been that good.

A number of interviewees agreed that the government struggles to find qualified personnel – “people on the ground” – needed to effectively conduct consultation in the northeast. Consultation agreements are irrelevant if they don't actually result in accommodation of the interests of First Nations. As demonstrated by recent publicity campaigns by the FNFN, new agreements – still based on a permit-by-permit approach – have only served to exacerbate existing tensions between the government of British Columbia and Treaty 8 First Nations (Hume 2012; Vanderklippe 2013). Certainly industry, government, and First Nations interviewees unanimously acknowledged the lack of trust and respect in current interactions. One lands manager stated: “Hopefully there's a future where we can respect each others' concerns because we know what they want. We know they want development, we know, we see that, but we just want to be taken into account, okay, water consumption and cumulative impacts.”

The shale gas industry becomes a focal point for First Nation–government relations because the implications of a poorly regulated industry are so profound. Rapid, under-planned development is one of the most immediate threats to Treaty 8 First Nations territories and, in turn, culture; thus, meaningful oil and gas consultation is an integral part of building any sort of “new relationship.” A first step is implementing lands managers' proposals (discussed above) – proposals that are not unrealistic. Indeed, the lands managers are arguably only asking the government to fulfill its existing responsibilities to protect the natural environment of British Columbia and to meet fiduciary obligations to consult and accommodate. In the absence of robust provincial oil and gas governance that includes cumulative effects assessments and landscape-scale planning, there is a governance gap that threatens the communities and ecological integrity of the northeast.

CONCLUSION

Existing consultation processes for oil and gas development in British Columbia are inadequate: they are not leading to accommodation of First Nations concerns. They are operating at a culturally inappropriate (site-specific) scale and are excluding First Nations from the decision-making process. These systemic problems were recently reinscribed in new consultation agreements, which perpetuate widely recognized failings of permit-by-permit consultation. Provincial consultation is thus lagging further and further behind current case law on the Crown's duty to consult and accommodate. In a legal analysis of the Crown's duty to consult and accommodate, Morellato (2008, 70–71) found not only that permit-by-permit consultation fails to reflect current case law but also that the “referral process facilitates unilateral self-serving actions, since the Crown alone is currently the final arbitrator of land and resource use decisions in circumstances where it stands to gain substantially from further land alienation or resource development.” Indeed, the provincial government's approach to consultation continues to reflect the federal government's reasons for treaty making over a century ago: increased certainty of access to resources. The province's long-standing conflict of interest should serve as a warning to other First Nations currently institutionalizing their role with the state as LNG developments progress.

The strong support for the FNFN's stance in opposition to the provincial government's failure to consult about the removal of environmental assessments for sweet gas processing plants indicates that this warning is being heard by other First Nations and that it should send a clear signal to the provincial government about the need to consult. Consultation, however, is inadequate; the government must also *accommodate* First Nations concerns and interests in the consultation process, something that it is clearly failing to do. This message is reinforced by the Supreme Court of Canada's recent decision on the *Tsilhqot'in* case. The Court's finding – that Aboriginal title requires not only that First Nations be consulted and their interests accommodated but also that they *consent* to developments on their lands – creates a new benchmark for the relationship between those First Nations who have never signed treaties and the provincial government. Although the extent to which it will apply to First Nations that have signed treaties is not yet clear, early indications suggest that it will likely require significant transformations to current practices (McIvor 2014). It is likely that court cases will increase in reaction to an evolving legal landscape and rapid industrial expansion. But this approach is costly and time-consuming for First Nations, while

the oil and gas industry continuously spreads itself across the landscape with roads and wells. A better approach would be for the government to take the lead in developing an oil and gas governance regime that is founded on and nurtures a respectful relationship with First Nations.

Friction between First Nations and the provincial government regarding consultation cannot be separated from the larger failings of the oil and gas governance system and its inability to protect the natural environment. Scientists, ENGOS, civil society organizations, and the Auditor General's Office of British Columbia are echoing First Nations concerns regarding the lack of landscape scale planning and monitoring needed to protect the ecological integrity of the region (BC Forest Practices Board 2011; Nitschke 2008; Office of the Auditor General of BC 2010, 2013; Parfitt 2011). The time has come for the government to take up its duties and work towards building institutions and systems that balance development with long-term ecological health and the protection of First Nations legal rights.

REFERENCES

- Adams, Christopher. 2012. *Summary of Shale Gas Activity in Northeast British Columbia 2011*. Ministry of Energy and Mines, Geoscience and Strategic Initiatives Branch. <http://www.empr.gov.bc.ca/Mining/Geoscience/PublicationsCatalogue/OilGas/OGReports/Documents/2012/Summary%20of%20Shale%20Gas%20Activity%20in%20NEBC%202011%20Version%20HQ.pdf>.
- BC Forest Practices Board. 2011. *Cumulative Effects: From Assessment towards Management*. http://www.fpb.gov.bc.ca/SR39_Cumulative_Effects_From_Assessment_Towards_Management.pdf.
- BC Ministry of Aboriginal Relations and Reconciliation (MARR). 2012. *Fort Nelson First Nation Oil and Gas Consultation Agreement*. BC Ministry of Aboriginal Relations and Reconciliation. http://www.newrelationship.gov.bc.ca/shared/downloads/oil_gas_agreement.pdf.
- BC Ministry of Energy and Mines (MEM). 2010. "Rules Support Responsible Natural Gas, Petroleum Growth." News release, 4 October. <http://www.bcogc.ca/node/5902/download>.
- . 2012. *Liquefied Natural Gas: A Strategy for BC's Newest Industry*. http://www.gov.bc.ca/ener/popt/down/liquefied_natural_gas_strategy.pdf.
- BC OGC. 2010. *Horn River Basin Status Report 2010*. BC Oil and Gas Commission. <http://www.bcogc.ca/node/5930/download?documentID=1015&type=.pdf>.
- . 2013. *Water Use in Oil and Gas Activities: 2012 Annual Report*. <http://www.bcogc.ca/publications/reports>.
- Boersma, Tim, and Corey Johnson. 2012. "The Shale Gas Revolution: US and EU Policy and Research Agendas." *Review of Policy Research* 29 (4): 570-76. doi:10.1111/j.1541-1338.2012.00575.x.

- Booth, Annie L., and Norm W. Skelton. 2011a. "You Spoil Everything!' Indigenous Peoples and the Consequences of Industrial Development in British Columbia." *Environment, Development and Sustainability* 13 (4): 685-702. doi:10.1007/s10668-011-9284-x.
- . 2011b. "'We Are Fighting for Ourselves': First Nations' Evaluation of British Columbia and Canadian Environmental Assessment Processes." *Journal of Environmental Assessment Policy and Management* 13 (3): 367-404. doi:10.1142/S1464333211003936.
- . 2011c. "Improving First Nations' Participation in Environmental Assessment Processes: Recommendations from the Field." *Impact Assessment and Project Appraisal* 29 (1): 49-58. doi:10.3152/14615511X12913679730395.
- Campbell, Karen, and Matt Horne. 2011. *Shale Gas in British Columbia: Risks to BC's Water Resources*. The Pembina Institute. <http://www.pembina.org/pub/2263>.
- Campbell, Karen, and Emma Hume. 2012. "Oil and Gas: Reforming Oil and Gas Law." In *Maintaining Natural BC for Our Children: Selected Law Reform Proposals*, ed. Calvin Sandborn, 37-42. University of Victoria: Environmental Law Centre. http://www.elc.uvic.ca/press/documents/2013-MaintainingNaturalBC_WEB-VERSION.pdf.
- Carrier Sekani Tribal Council. 2007. *First Nations Perspectives on the BC Environmental Assessment Process for Discussion Purposes*. <http://www.carriersekani.ca/images/docs/lup/EAO%20Critique%20-%20CSTC.pdf>.
- Constitution Act. 1982. Government of Canada. <http://laws-lois.justice.gc.ca/eng/Const/index.html>.
- Dagg, Jennifer, Karen Campbell, and Terra Simieritsch. 2011. *Tenable Tenure: The Need for Oil and Gas Tenure Reform in British Columbia*. The Pembina Institute. <http://www.pembina.org/pub/2273>.
- Energy Information Administration. 2011. *World Shale Gas Resources: An Initial Assessment of 14 Regions Outside the United States*. Washington, DC: US Department of Energy. <http://www.eia.gov/analysis/studies/worldshalegas/pdf/fullreport.pdf>.
- Forest and Range Practices Act sbc 2002. c. 69. Government of British Columbia. http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02069_01.
- Fumoleau, Rene. 2004. *As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939*. Calgary: University of Calgary Press.
- Gedicks, Al. 2001. *Resource Rebels: Native Challenges to Mining and Oil Corporations*. Cambridge: South End Press.
- Gosine, Andil, and Cheryl Teelucksingh. 2008. *Environmental Justice and Racism in Canada: An Introduction*. Toronto: Edmond Montgomery Publications Limited.
- Howarth, Robert W., Renee Santoro, and Anthony Ingraffea. 2011. "Methane and the Greenhouse-Gas Footprint of Natural Gas from Shale Formations." *Climatic Change* 106 (4): 679-90. doi:10.1007/s10584-011-0061-5.
- Hume, Mark. 2012. "Native Band in Northeast BC Pushes for Water Licensing Reform." *Globe and Mail*, 14 November. <http://www.theglobeandmail.com/news/british-columbia/native-band-in-northeast-bc-pushes-for-water-licensing-reform/article5268459/>.

- International Energy Agency (IEA). 2012. *Golden Rules for a Golden Age of Gas: World Energy Outlook Special Report on Unconventional Gas*. Paris: IEA. <http://www.worldenergyoutlook.org/goldenrules/>.
- International Human Rights Clinic (IHRC). 2010. *Bearing the Burden: The Effects of Mining on First Nations in British Columbia*. Harvard Law School. <http://harvardhumanrights.files.wordpress.com/2011/08/rightburden.pdf>.
- Laird, David, J.H. Ross, and J.H.J. McKenna. 1899. *Report of Commissioners for Treaty No. 8*. Aboriginal Affairs and Northern Development Canada. <http://www.aadnc-aandc.gc.ca/eng/1100100028813/1100100028853#chp2>.
- Markey, Sean, Greg Halseth, and Don Manson. 2008. "Challenging the Inevitability of Rural Decline: Advancing the Policy of Place in Northern British Columbia." *Journal of Rural Studies* 24 (4): 409–21. doi:10.1016/j.jurstud.2008.03.012.
- McBride, Stephen, and Kathleen McNutt. 2007. "Devolution and Neoliberalism in the Canadian Welfare State Ideology, National and International Conditioning Frameworks, and Policy Change in British Columbia." *Global Social Policy* 7 (2): 177–201. doi:10.1177/1468018107078161.
- McIvor, Bruce. 2014. "The Age of Recognition: The Significance of the William Decision." First Peoples Law. <http://www.firstpeopleslaw.com/index/articles/158.php>.
- Morellato, Maria. 2008. *The Crown's Constitutional Duty to Consult and Accommodate Aboriginal and Treaty Rights*. National Centre for First Nations Governance. http://fngovernance.org/resources_docs/Crown_Duty_to_Consult_Accommodate.pdf.
- Muir, Bruce R., and Annie L. Booth. 2011. "An Environmental Justice Analysis of Caribou Recovery Planning, Protection of an Indigenous Culture, and Coal Mining Development in Northeast British Columbia, Canada." *Environment, Development and Sustainability* 14: 455–76. doi:10.1007/s10668-011-9333-5.
- Nitschke, Craig. 2008. "The Cumulative Effects of Resource Development on Biodiversity and Ecological Integrity in the Peace-Moberly Region of Northeast British Columbia, Canada." *Biodiversity and Conservation* 17 (7): 1715–40. doi:10.1007/s10531-008-9376-6.
- Nuttall, Mark. 2010. *Pipeline Dreams: People, Environment, and the Arctic Energy Frontier*. Somerset: Transaction Publishers.
- Office of the Auditor General of BC. 2010. *An Audit of the Management of Groundwater Resources in British Columbia*. Report 8, December. <http://www.bcauditor.com/pubs/2010/report8/audit-management-groundwater-resources-british-columbia>.
- . 2013. *An Audit of Biodiversity in BC: Assessing the Effectiveness of Key Tools*. Report 10, February. <http://www.bcauditor.com/pubs/2013/report10/audit-biodiversity-bc-assessing-effectiveness-key-tools>.
- Oil and Gas Activities Act SBC 2008 c. 36. Government of British Columbia. Act. http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_08036_01.
- O'Rourke, Dara, and Sarah Connolly. 2003. "Just Oil? The Distribution of Environmental and Social Impacts of Oil Production and Consumption."

- Annual Review of Environment and Resources* 28 (1): 587–617. doi:10.1146/annurev.energy.28.050302.105617.
- Osborn, Stephen G., Avner Vengosh, Nathaniel R. Warner, and Robert B. Jackson. 2011. “Methane Contamination of Drinking Water Accompanying Gas-Well Drilling and Hydraulic Fracturing.” *Proceedings of the National Academy of Sciences* 108 (20): 8172–76. doi:10.1073/pnas.1100682108.
- Parfitt, Ben. 2011. *Fracking Up Our Water, Hydro Power and Climate: BC’s Reckless Pursuit of Shale Gas*. Vancouver: Canadian Centre for Policy Alternatives. http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2011/11/CCPA-BC_Fracking_Up.pdf.
- Prystupa, Mychaylo. 2014. “Defiant Northern Chief Galvanizes First Nations against Premier’s LNG Plans.” *Vancouver Observer*, 22 April. <http://www.vancouverobserver.com/news/bc-first-nations-slam-brakes-premier-s-lng-plans?page=0,0>.
- Ray, Arthur J. 1999. “Treaty 8: A British Columbian Anomaly.” *BC Studies* 123: 5–58.
- Stefik, Ron and Ken Paulson. 2010. “When Unconventional Becomes Conventional: Canadian Society for Unconventional Gas.” Society of Petroleum Engineers. http://www.spe.org/events/curipc/2010/pages/schedule/tech_program/documents/spe1368631.pdf.
- Stephenson, Eleanor, Alexander Doukas, and Karena Shaw. 2012. “Greenwashing Gas: Might a ‘Transition Fuel’ Label Legitimize Carbon-Intensive Natural Gas Development?” *Energy Policy* 46: 452–59. doi:10.1016/j.enpol.2012.04.010.
- Tollefson, C., and K. Wipond. 1998. “Cumulative Environmental Impacts and Aboriginal Rights.” *Environmental Impact Assessment Review* 18 (4): 371–90. doi:10.1016/S0195-9255(98)00011-0.
- Vanderklippe, Nathan. 2013. “Showdown Looms over BC’s Gas Exports.” *Globe and Mail*, 5 February. <http://www.theglobeandmail.com/report-on-business/showdown-looms-over-bcs-gas-exports/article8281337/>.
- West Coast Environmental Law (WCEL). 2004. *Oil and Gas in British Columbia: 10 Steps to Responsible Development*. <http://www.wcel.org/sites/default/files/publications/Oil%20and%20Gas%20in%20British%20Columbia.pdf>.